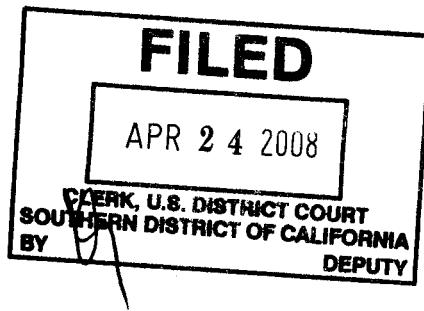


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7 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

11 || UNITED STATES OF AMERICA, } Magistrate Case No. 08MJ1091

Engineering Case P.v. 00011009

12 Plaintiff,

13 || Page

15 V.

14 | LUIS ENRIQUE LEÓN-LEYVA (1)

<sup>1</sup> See also the discussion of the "right to privacy" in Part II.

15 || Defendant

**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**

### **(Pre-Indictment Fast-Track Program)**

17       **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Jeffrey D.  
19 Moore, Assistant United States Attorney, and defendant LUIS ENRIQUE LEON-LEYVA, by and  
20 through and with the advice and consent of Michelle Betancourt, counsel for defendant, that:

21       1.     Defendant agrees to execute this stipulation on or before the first preliminary hearing  
22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
23 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
24 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
25 of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii)  
26 and (v)(II).

27 //

28 JDM:rp:4/11/08

1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
 2 provide the signed, original plea agreement to the Government not later than five business days  
 3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
 5 before **May 28, 2008**.

6           4. The material witnesses, Fidel Gasga-Rubio, in this case:

7               a. Are aliens with no lawful right to enter or remain in the United States;  
 8               b. Entered or attempted to enter the United States illegally on or about  
 9 April 7, 2008;

10              c. Were found in a vehicle driven by defendant near Pine Valley, California and  
 11 that defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful  
 12 right to enter or remain in the United States;

13              d. Were paying \$1,800 to others to be brought into the United States illegally  
 14 and/or transported illegally to their destination therein; and,

15              e. May be released and remanded immediately to the Department of Homeland  
 16 Security for return to their country of origin.

17           5. After the material witnesses are ordered released by the Court pursuant to this  
 18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
 19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
 20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21               a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
 22 substantive evidence;

23               b. The United States may elicit hearsay testimony from arresting agents  
 24 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
 25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
 26 of (an) unavailable witness(es); and,

27               c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),

28 Stipulation of Fact and Joint Motion for Release of  
 Material Witness(es) And Order Thereon in  
 United States v. Luis Enrique Leon-Leyva

“testimonial” hearsay statements are not admissible against a defendant unless defendant confronted and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant waives the right to confront and cross-examine the material witness(es) in this case.

4       6. By signing this stipulation and joint motion, defendant certifies that defendant has  
5 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
6 further that defendant has discussed the terms of this stipulation and joint motion with defense  
7 counsel and fully understands its meaning and effect.

8       Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
9 immediate release and remand of the above-named material witness(es) to the Department of  
10 Homeland Security for return to their country of origin.

11 It is STIPULATED AND AGREED this date.

Respectfully submitted,

KAREN P. HEWITT  
United States Attorney

15 Dated: 4/24/08

**JEFFREY D. MOORE**  
**Assistant United States Attorney**

17 Dated: 4/21/68.

~~MICHELE BETANCOURT~~  
Defense Counsel for Luis Enrique Leon-Leyva

20 Dated: 4/21/08.

LUIS ENRIQUE LEON-LEYVA  
Defendant

28 Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
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## ORDER

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded

forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 4/24/2008

Ruth Brown  
United States Magistrate Judge